

**DECISION**



*188472 Selden*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE:** B-202723

**DATE:** July 22, 1981

**MATTER OF:** Proper Recipient of Award Proceeds of Poplar Grove Farms Federal, Inc. *16-0-152*

**DIGEST:** Proceeds of Foreign Claims Settlement Commission award to Poplar Grove Farms Federal, Inc. should be distributed to heir or heirs of U.S. Harkson, deceased sole corporate shareholder, since under China Trade Act corporation is terminated and there are no living members of its board of directors to act as trustees. Claim for attorneys fees should be settled between claimant and payees.

This responds to a Treasury Department request under section 7(c)(2) of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. § 1626(c)(2), implemented by 31 C.F.R. § 250.4(f), for our determination of what person or persons is entitled to proceeds of a Foreign Claims Settlement Commission award to Poplar Grove Farms Federal, Inc. Treasury's submission is based upon a claim to part of those proceeds by Mr. I. Arnold Ross, the attorney who represented Poplar Grove before the Commission. For the reasons given below we conclude that the award proceeds should go directly to the heirs of Mr. U.S. Harkson, the deceased sole shareholder of the Corporation.

Poplar Grove Farms Federal, Inc. was incorporated under the provisions of the China Trade Act, 15 U.S.C. §§ 141 and following, as amended. Originally, the corporation was engaged in the purchase and sale of milk and milk products, farm produce and livestock. Based on damage caused by Japanese military operations, the corporation received an award under the War Claims Act of 1948, 50 U.S.C. App. §§ 2001 and following, as amended (Claim No. W-13220).

*100-00486*  
Subsequently, Mr. Ross presented a claim on behalf of Poplar Grove before the Foreign Claims Settlement Commission under Title V of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. §§ 1643-1643k. That title authorized the Commission to determine the validity and amount of claims of United States nationals for losses resulting, among other things, from the nationalization or expropriation of their property by or under the authority of the People's Republic of China. Based on the evidence presented, the Commission found that Poplar Grove was entitled to \$22,078.50. In re Poplar Grove Farms Federal, Inc. No. CN-288A (June 17, 1970).

In 1979 the People's Republic of China agreed to provide monies for payment of Commission awards to be paid over a 5-year period beginning in that year. The Commission certified several hundred of

*[Distribution of Proceeds of Foreign Claims Settlement Commission Award]*

*53*

*017636*

**115879**

the awards to Treasury for payment, including that of Poplar Grove. Treasury has informed us that \$4,973.86 was allocated to Poplar Grove for 1979 and 1980 and that further sums, as yet undetermined will be allocated for 1981, 1982 and 1983.

Treasury submitted the matter to this Office pursuant to 22 U.S.C. § 1626(c)(2) and 31 C.F.R. § 250.4(f) which provide that a claim for proceeds of a Foreign Claims Settlement Commission award be paid to the person or persons found by the Comptroller General to be entitled thereto, when a corporate awardee has been terminated and no court-appointed trustee is empowered to act on behalf of the corporation.

In its submission, Treasury proposed two alternate courses of action. One would be to make payment directly to the successors in interest of Mr. Harkson, sole shareholder of Poplar Grove. According to Mr. Harkson's will, 45 percent of his estate was bequeathed to Doris H. Harkson, his spouse, and 55 percent to Robert W. Harkson and Severin B. Harkson, his two children.

The other proposal mentioned by Treasury, which was suggested by Mr. Ross, is that payment be made to Poplar Grove as though it had not been dissolved. Under this proposal Mr. Laurist V. Larsen, apparently the only living corporate official, would receive payment and distribute the funds. Treasury notes that, in the unlikely event there are corporate creditors in addition to Mr. Ross, Mr. Larsen probably would be in a better position to assess the validity of the claims and administer payment than Mr. Harkson's legatees.

In our opinion, Poplar Grove is a terminated corporation. A corporation engaged in business under the China Trade Act was required to file articles of incorporation with the Secretary of Commerce, which were required to state the duration of its corporate existence. 15 U.S.C. § 144(b)(5). A China Trade Act corporation in existence prior to 1938 (as was Poplar Grove), was permitted to make its existence perpetual but only by amendment of its charter upon application to the Secretary of Commerce. 15 U.S.C. § 144a.

Under its Articles of Incorporation, Poplar Grove was to exist for 25 years. The Secretary of Commerce issued Poplar Grove's Certificate of Incorporation on November 6, 1934. The record contains no indication that Poplar Grove ever filed an amendment to its charter for perpetual existence. Therefore, we conclude that the Corporation terminated by operation of law in November 1959. The conclusion that Poplar Grove no longer exists is supported by Mr. Larsen in an affidavit presented to the Foreign Claims Settlement Commission on April 13, 1970.

The China Trade Act provides that in case of voluntary dissolution or revocation of a certificate of incorporation, the directors shall become trustees for creditors and stockholders of the dissolved corporation. 15 U.S.C. § 156. The trustees have the authority to perform all necessary acts to wind up the corporation's affairs and divide among the stockholders the corporation's remaining property after all obligations have been settled.

However, the facts suggest that there are no individuals still living who were directors of Poplar Grove. This was the conclusion reached by Treasury in its submission to us in October 1980:

"[Mr. Ross] maintains that L.V. Larsen, the former vice-president and only living corporate official would be authorized to receive payment and distribute the funds. There is no information that Mr. Larsen was also a director."

Although Mr. Larsen claimed in early 1981 that in December 1947 he had become a member of the corporation's Board of Directors as well as Vice-President, there is insufficient evidence to corroborate his assertion. Mr. Larsen himself stated he was unable to locate any records that show he was a corporate officer and director. Moreover, the Foreign Claims Settlement Commission decision on the Poplar Grove award describes Mr. Larsen only as a "former employee" of the corporation and not a board member. In re Poplar Grove Farms Federal, Inc., No. CN-288A (June 17, 1970).

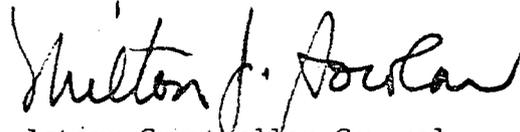
Since there is no corporate board member to whom payment can be made we conclude that the monies awarded Poplar Grove should be distributed to the heir or heirs of Mr. Harkson. Mr. Harkson was the sole shareholder of Poplar Grove and became entitled to its assets upon its dissolution. Cf. B-160559, June 12, 1967.

Although we agree with Mr. Ross that any outstanding debts of Poplar Grove should be paid from the award, in view of the time that has elapsed since the Corporation did business, we doubt there would be any claims against the assets with the exception of his claim for legal fees. However, as a condition of payment, to protect the Government, we would require that the recipients of the award sign an agreement providing that they and their heirs will reimburse the United States and hold it harmless should a creditor or other claimant present a valid claim to a part of the award proceeds.

With respect to the attorneys fees claimed by Mr. Ross, we agree with Treasury that that matter should be settled between Mr. Ross

B-202723

and the payees. We note that attorney's fees for the China Claims program are addressed in 22 U.S.C. § 1643k.

A handwritten signature in black ink, reading "Milton J. Jordan". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General  
of the United States